

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**IN RE: NATIONAL COLLEGIATE  
ATHLETIC ASSOCIATION STUDENT-  
ATHLETE CONCUSSION LITIGATION**

MDL NO. 2492

Master Docket No. 13-cv-09116

Judge John Z. Lee

Magistrate Judge Geraldine Soat  
Brown

**PLAINTIFFS' SUPPLEMENTAL SUBMISSION REGARDING THE  
FEASIBILITY AND COST OF DIRECT NOTICE**

Plaintiffs submit this supplemental submission regarding the feasibility and cost of direct notice to inform the Court of actions and progress related to the settlement and the provision of class notice in the case of *Keller v. Electronic Arts, Inc. et al.*, Case No. 4:09-cv-01967-CW (N.D. Cal.) ("NCAA Likeness Settlement"), which may be relevant to the Court's consideration of the parties' proposal regarding class notice here.

The NCAA Likeness Settlement classes broadly include certain NCAA football and basketball players listed on rosters published or issued by a school whose team was included in NCAA-Branded Videogames since 2003. The Court-approved notice and claims administrator in the NCAA Likeness Settlement is Gilardi & Co. ("Gilardi"), the same proposed notice and claims administrator in the instant case.<sup>1</sup>

Since the Court's preliminary approval of the NCAA Likeness Settlement in 2014, the efforts to obtain direct contact information in the Likeness Settlement are similar to what the parties are proposing to do here. While these efforts are still in progress, they have been largely

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<sup>1</sup> See Declaration of Christopher A. O'Hara ("O'Hara Decl."), ¶ 4, attached as Exhibit A.

successful in obtaining class member contact information and may partially inform the Court as to what can be done in the same regard here.

The process began in earnest on November 12, 2014 with the NCAA sending its member schools emails and letters requesting and instructing them to attempt to compile and submit to Gilardi data including all last known contact information for the schools' current and former football and men's basketball players going back to 2003. The schools were asked and directed to download their data to a Gilardi-designed and maintained secured website. The first responding download of contact information from a school happened just days later, on November 17, 2014.<sup>2</sup>

Following a reminder email from the NCAA to the schools in early December, 2015, the response rate picked up substantially and the schools have been individually and successfully downloading their data to Gilardi's website ever since. As the parties have also seen here, several member institutions expressed concerns that they would require a subpoena before providing contact information, to ensure compliance with, *inter alia*, the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, so subpoenas were sent to these schools asking for that information and that process is ongoing, as the schools respond to the subpoenas.<sup>3</sup>

As of December 26, 2014, 156 member institutions had provided Gilardi ascertainable information regarding the names and last-known addresses of NCAA football and basketball players who were listed on a roster published or issued by a school whose team was included in an NCAA-Branded Videogame originally published or distributed going back to 2003. At that time, Gilardi sampled the information uploaded by NCAA-member institutions and analyzed the quality of

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<sup>2</sup> O'Hara Decl., ¶ 5.

<sup>3</sup> O'Hara Decl., ¶ 6. *See also* Stipulation and Order Concerning Extension of Deadlines in Orders Granting Preliminary Approval of Class Action Settlements in the Likeness Settlement, dated December 29, 2014, at p. 1-3 ("Likeness Order"), attached as Ex. 1 to the O'Hara Decl.

the addresses. Gilardi's analysis found that approximately 97% of the addresses were valid addresses, and were therefore likely to be effective in disseminating information to Settlement class members in the NCAA Likeness Settlement.<sup>4</sup>

As of February 18, 2015, Gilardi had received downloads of contact information from a total of 284 NCAA schools, out of approximately 330 member institutions, which were sent requests and/or subpoenas. Based on the contact information obtained to date and that expected to come in over the next few weeks, Gilardi is preparing to mail direct notice to class members in the Likeness Settlement beginning in early March, 2015.<sup>5</sup>

Based on the contact information received to date, Gilardi estimates that approximately 60% of the Likeness class will be mailed a notice regarding the settlement there. Gilardi has also prepared an indirect notice plan to supplement the direct notice efforts in the Likeness Settlement, including nationwide publication on the internet through directed advertising to likely class members, and print publication in *ESPN the Magazine* and *Sports Illustrated* magazine. Gilardi estimates that the combined reach of the direct and indirect notice efforts in the Likeness Settlement will exceed 80%.<sup>6</sup>

Attached as Exhibit 2 to the O'Hara Declaration is a chart prepared by Gilardi listing each school that has downloaded their data to the Likeness Settlement website and the date of the download, as of February 18, 2015.<sup>7</sup> Attached as Exhibit 3 to the O'Hara Declaration is a graph prepared by Gilardi showing the rate of downloads by the schools in the Likeness Settlement through February \_\_\_\_, 2015.<sup>8</sup>

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<sup>4</sup> O'Hara Decl., ¶ 7. *See also* Ex. 1 to O'Hara Decl., Likeness Order at p. 2.

<sup>5</sup> O'Hara Decl., ¶ 8.

<sup>6</sup> O'Hara Decl., ¶ 9.

<sup>7</sup> *See* Ex. 2 to O'Hara Decl.

<sup>8</sup> *See* Ex. 3 to O'Hara Decl.

While the Likeness class is smaller than the proposed Settlement Class here, the process in place for obtaining last known direct contact information for current and former student-athletes has been largely successful in the Likeness Settlement and may inform similar efforts before this Court.

Date: February 23, 2015

Respectfully submitted,

By: /s/ Steve W. Berman

Steve W. Berman

*steve@hbsslaw.com*

HAGENS BERMAN SOBOL SHAPIRO LLP

1918 Eighth Avenue, Suite 3300

Seattle, WA 98101

206.623.7292

Fax: 206.623.0594

Elizabeth A. Fegan

*beth@hbsslaw.com*

Thomas E. Ahlering

*toma@hbsslaw.com*

HAGENS BERMAN SOBOL SHAPIRO LLP

1144 W. Lake Street, Suite 400

Oak Park, IL 60301

708.628.4949

Fax: 708.628.4950

Joseph J. Siprut

*jsiprut@siprut.com*

Gregg M. Barbakoff

*gbarbakoff@siprut.com*

SIPRUT PC

17 North State Street

Suite 1600

Chicago, IL 60602

312.236.0000

Fax: 312.878.1342

*Co-Lead Counsel*

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that on February 23, 2015, a true and correct copy of the foregoing was filed electronically via CM/ECF, which caused notice to be sent to all counsel of record.

By: /s/ Steve W. Berman